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Advisory Board on Toxic Substances & Worker Health

RE: Public Comments for ABTSWH Meeting on April 22, 2021

Hello Dr. Markowitz, Board members, Mr. Chance, Director Pond, and John Vance.

I want to commend the ABTSWH Committee on the extensive work and its recommendations on the IARC carcinogens.

I also want to commend the Dept. of Labor on its work to maintain the adjudication of claims during COVID.

I would like to give the Board my fly over view of the past year:

I have experienced ongoing issues with the Dept. of Labor district offices and claims examiners not thoroughly reviewing the SEM data for toxins not only for the Labor Category, but also for the areas where the claimant reports to have worked. This occurs despite there being evidence in the OHQ, Dept. of Energy personnel records, the EE-3 claim form, and the SEM reported work locations. The claims examiners are not taking the word of the claimant, nor the Authorized Representative. These oversights can only be corrected through training by the Dept. of Labor.

I also want to point out that the Dept. of Labor is using of the Medical Director (MD) as a Contract Medical Consultant (CMC) opinion in claim adjudication. When requested by the policy branch (PB) the MD provides an opinion memo, not a CMC opinion. This opinion is based on limited information in a statement of facts from the claim file provided by the PB. The referral seeks answers to specific questions. It is unclear what parameters trigger the claim being sent to the PB.

It has been my experience that the PB statement of the facts for the referral to the MD has been incorrect leading to incorrect assumptions and erroneous opinions. After the MD opinion one claim was subsequently sent to a CMC with instructions from the MD on what areas of the AMA Guides 5<sup>th</sup> edition the CMC could opine on for an Impairment rating (IR). The "instruction" by MD to the CMC on what they could and could not opine violates the premise of the Whole Person IR and should not have been allowed to occur. Because the Dept. of Labor used the MD memo as a CMC opinion the claimant was denied a referee CMC opinion.

(The normal claim adjudication process allows for a medical opinion from the claimant's physician which can be challenged by a CMC opposing opinion. The CMC opinion will be used over the attending physician's unless the claimant requests a referee CMC opinion. After there is a referee CMC opinion it will be used to break the tie.)

The Dept. of Labor has said at this meeting that MD is an expert opinion, and can be consulted per the Procedure Manual. However, the Procedure Manual has no provision for the MD opinion to take the place of a CMC opinion.

I appreciate the ongoing improvements to the EEOICPA program. As a long standing claimant it has come a far cry from the five years it took my claim in 2004 to be approved. I look forward to resolving the issues I have presented to the ABTSWH today and any future concerns.

I want to also say I miss being on the ABTSWH and my many fellow board members.

Faye Vlieger